

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 174 & 958 of 1992
T.A. No.

DATE OF DECISION 31-8-1992

Mr PK Karunakaran _____ Applicant (s) in OA-174/92
Mr M Sadanandan - Applicant in OA-958/92

Mr P Sivan Pillai _____ Advocate for the Applicant (s) in OA-174/92
Mr K Ramakumar - Advocate for applicant in OA-958/92
Versus

DPO, S.Railway, Trivandrum & Respondent (s) in OA-174/92
3 others

UOI, represented by GM, S.Railway, - Respondents in
Madras & 4 others OA-958/92

Mrs Sumathi Dandapani _____ Advocate for the Respondent (s) 1 to 3
in OA-174/92 & R.1-4 in OA-958/92

CORAM: Mr K Ramakumar -Advocate for R-4 in OA-174/92

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Clos
2. To be referred to the Reporter or not? On
3. Whether their Lordships wish to see the fair copy of the Judgement? On
4. To be circulated to all Benches of the Tribunal? On

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

As the parties are the same and as the facts and causes of actions are closely inter-linked, these two applications are being disposed of by this common order.

2. The applicant in OA-174/92 Shri PK Karunakaran is the 5th respondent in OA-958/92. Shri M Sadanandan, the 4th respondent in OA-174/92 is the applicant in OA-958/92. The factual matrix is thus.

3. Shri PK Karunakaran, the applicant in OA-174/92 commenced service as a Casual Labour in the year 1977. He was absorbed in the regular service as a Bricklayer in

the skilled Grade-III towards 25% quota reserved for skilled casual labourers by order dated 20.11.1990 and posted to Trichur. He was later transferred from Trichur to Kottayam by order dated 23.1.1991. On the basis of his request, he was then transferred from Kottayam to Ernakulam by order dated 19.4.1991 at Annexure-A2. While he was working at Ernakulam, by the office order No.2/92/WP of the Divisional Personnel Officer, Trivandrum, he was transferred to Kottayam, retaining the 4th respondent Shri M Sadanandan, his junior in service at Ernakulam South. The applicant is a native of Ponnuruthi, a place situated just 3 KMs away from Ernakulam South station. His children are studying in school at Ernakulam. Aggrieved by his transfer from Ernakulam where he was posted at his request, within a short span of nine months, while his junior Shri Sadanandan was retained at Ernakulam, the applicant made a representation to the Divisional Personnel Officer, Trivandrum(Annexure-A4). Soon after making the representation, Shri Karunakaran filed OA-174/92 seeking to quash the order at Annexure-A3 dated 7.1.1992 to the extent it relates to his transfer. While the application was pending, the first respondent, the Divisional Personnel Officer, Trivandrum on receipt of the representation of Shri Karunakaran, called for the connected papers examined the matter involved and noticing that there was anomaly in transferring Shri Karunakaran to Kottayam while retaining Shri Sadanandan his junior at Ernakulam, issued an order dated 27.4.1992(Office Order No.69/92/WP) at Annexure-R1 modifying the impugned order at Annexure-

A3 retaining Shri PK Karunakaran at Ernakulam South and transferring Shri Sadanandan, the 4th respondent in OA-174/92 and the applicant in OA-958/92 to Kottayam. The respondents 1-3 filed a reply statement stating that the application filed by Shri Karunakaran in OA-174/92 without giving the first respondent sufficient time to consider and dispose of his representation was premature but indicating that as the grievance of the applicant Shri Karunakaran had been redressed by the order at Annexure-R1, the application may be dismissed. Shri Sadanandan, the 4th respondent in OA-174/92 filed a reply statement contending that as Shri Karunakaran had longer stay at Ernakulam than him, his transfer to Kottayam was perfectly in order and objecting to his transfer from Ernakulam to Kottayam. Shri Sadanandan on receipt of the copy of office order No.69/92/WP(Annexure-R1) in OA-174/92 and Annexure-B in OA-958/92, made a representation requesting for retention at Ernakulam. While so, the 4th respondent, the Assistant Engineer, Southern Railway, Ernakulam issued an order dated 10.7.1992 Annexure-D in OA-958/92 directing the D.I.O.W., Ernakulam South to relieve Shri Sadanandan at once in implementation of the office order No.69/92/WP of the Divisional Personnel Officer. Aggrieved by this order, Shri Sadanandan has filed OA-958/92 seeking to quash the Annexure-D order dated 10.7.1992 and for a direction to the respondents 1-4 in OA-958/92 to allow him to continue at Ernakulam. Shri Sadanandan has averred in the application that Shri Karunakaran had worked at Ernakulam for longer time than him and that the office order No.69/92/WP of the Divisional

Personnel Office cancelling the transfer of Shri Karunakaran to Kottayam and transferring him to Kottayam during the pendency of DA-174/92 which was contested by him was highly irregular, that Shri Karunakaran was actually transferred from Trichur on a mutual transfer with Shri VR Sankaran who was junior to Shri Sadanandan and that the decision to transfer him to Kottayam, retaining Shri Karunakaran who had a longer stay at Ernakulam is violative of Articles 14,16 and 21 of the Constitution.

4. The respondents 1-4 in DA-958/92 seek to justify the office order No.69/92/WP directing retention of Shri Karunakaran at Ernakulam and transferring of Shri Sadanandan to Kottayam on the ground that on a perusal of the records pursuant to the representation submitted by Shri Karunakaran, the mistake committed in transferring Shri Karunakaran to Kottayam while retaining the applicant who is junior to him at Ernakulam came to light and that the office order No.69/92/WP was issued only to rectify the mistake. It has also been contended that the representation submitted by Shri Sadanandan was considered and he was informed that as the service of a Bricklayer under the PWI, Kottayam was found to be essential, his request for retention under CIOW, Ernakulam as Bricklayer could not be considered for the time being. A copy of this letter dated 7.7.1992 is at Annexure-R1. It has further been contended that as in the representation submitted by the applicant on 25.5.1992, the applicant had requested for a posting either at Ernakulam or under the CIOW, Kottayam, the complaint of the applicant against the

transfer to Kottayam has no basis. They have pointed out that while the real representation submitted by the applicant was for a posting either at Ernakulam or under CIOW, Kottayam copy of which is at Annexure-R2, the applicant has tried to mislead by producing Annexure-C which is at variance from the real representation submitted by him.

5. We have heard the arguments of the learned counsel for the parties and have also carefully gone through the pleadings and the documents. It is evident from Annexures-A3 in OA-174/92 that Shri Karunakaran, the applicant therein is senior to Shri Sadanandan, the 4th respondent. From the pleadings also it is evident that Shri Karunakaran is senior to Shri Sadanandan though Shri Sadanandan has raised a contention that Shri Karunakaran had got transferred from Trichur mutually with one Sankaran, who is junior to him. That the transfer of Shri Karunakaran from Trichur was on loss of seniority is not established by Shri Sadanandan by producing any evidence. The Railway Administration also maintains that Shri Karunakaran is senior to Shri Sadanandan. Even according to Shri Sadanandan as averred in ground(d) of the application in OA-958/92, the normal policy is to shift the junior in case both the senior and junior cannot be accommodated in one station. As Shri Karunakaran is senior to Shri Sadanandan, on an examination of the relevant records, the Divisional Personnel Officer understood that the earlier decision to transfer Shri Karunakaran to Kottayam retaining Shri Sadanandan at Ernakulam was irregular and unjustified and it was in these circumstances office order No.69/92/WP

was issued in partial modification of the earlier order dated 7.1.1992 and directing that Shri Karunakaran would be retained at Ernakulam transferring Shri Sadanandan to Kottayam. We do not find any arbitrariness or irregularity in this decision taken by the Divisional Personnel Officer. There is no averment that this decision was biased or motivated by malice. The Railway Administration has in their statement indicated that there are not sufficient number of vacancies to accommodate S/Shri Karunakaran and Sadanandan at Ernakulam South and that in the exigencies of service, it is necessary to fill the vacant post of Bricklayer under the PWI, Kottayam. If the exigencies of service require posting of Shri Sadanandan at Kottayam under the PWI, the administration should have the discretion to do so. Further from Annexure-R2 in OA-958/92, it is evident that Shri Sadanandan had requested for a posting either at Ernakulam or under the IOW, Kottayam. Since the services of the Bricklayer is considered more essential under the PWI, Kottayam as seen from Annexure-R1, the decision of the Senior Divisional Engineer dated 7.7.1992 at Annexure-R1 declining the request of Shri Sadanandan for retention at Ernakulam cannot be faulted. We notice that Shri Sadanandan, the applicant in OA-958/92 has made an attempt to show that he had requested for retention at Ernakulam and never expressed willingness to be transferred to Kottayam by producing Annexure-C alleging that it was a true copy of the representation submitted by him. But from Annexure-R2, the copy of the representation submitted by Shri Sadanandan on 25.5.1992, it is evident that he had requested

for a posting at Ernakulam or under the IOW, Kottayam where there was a vacancy. The explanation offered by Shri Sadanandan in his rejoinder that he had made a correction in another copy of the representation and had given it to the office of the Senior Divisional Engineer for consideration, does not appear to be convincing. However, giving the facts and circumstances our anxious consideration, we are convinced that the Administration has acted bona fide in accordance with the rules and instructions in issuing the office order No.69/92/WP at Annexure-R1 in OA-174/92 retaining Shri Karunakaran at Ernakulam and transferring Shri Sadanandan to Kottayam. To give effect to this order, Shri Sadanandan had naturally to be relieved from his post at Ernakulam South and therefore the order dated 10.7.1992 at Annexure-D in OA-958/92 is fully justifiable.

6. In the conspectus of facts and circumstances, as the relief claimed by Shri Karunakaran, the applicant in OA-174/92 has already been granted to him by the first respondent by office order No.69/92/WP(Annexure-R1), the grievance of the applicant in this application does not survive and therefore OA-174/92 is closed. Finding no merit in the application of Shri Sadanandan in OA-958/92, the same is dismissed.

7. We direct that the parties to these applications shall bear their respective costs.


(AV HARIDASAN)
JUDICIAL MEMBER


31.8.92
(SP MUKERJI)
VICE CHAIRMAN

31-8-1992

trs